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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,954	12/02/2003	Jeffrey L. Sands	10841; 60246-296	2882
21788 7590 08/04/2009 RYNDAK & SURI LLP 200 W. MADISON STREET SUITE 2100 CHICAGO, IL 60606				
EXAMINER KUMAR, RAKESH				
ART UNIT 3651		PAPER NUMBER		
MAIL DATE 08/04/2009		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/725,954

**Applicant(s)**

SANDS ET AL.

**Examiner**

RAKESH KUMAR

**Art Unit**

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4-12 and 18-29 is/are pending in the application.
- 4a) Of the above claim(s) 2,3 and 13-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-12 and 18-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 November 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/20/2009 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,4-6,8,9,21,23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sands (US 6,751,977) in view of Boyer (US 4,415,092).

Referring to claims 1,21,23,24. Sands discloses an automated freezer component (Figure 1) comprising:

a cartridge (22; Figure 5) for storing at least one item (52);

a platform (38b; Figure 1) moveable within said cartridge (22; Figure 1) in response to a request (signal) for said at least one item.

Sands does not disclose the cartridge as being removable and Sands does not disclose a retention mechanism for retaining articles when the cartridge is removed.

Boyer discloses an articles dispenser (Figure 4 and 5) wherein the cartridge (11) is removable and further a retention mechanism (26; Figure 5) comprising at least one retention member (26) moveable between a first position (Figure 4) and a second position (Figure 5), the at least one member (26) when in the first position (Figure 4) located to retain a portion of said at least one item in the dispenser when said cartridge is removed from the dispenser (see Figure 5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Sands to include a removable cartridge and a retention mechanism as taught by Boyer because the removable cartridge would make loading the dispenser easier and the retention mechanism would allow the dispenser to dispense articles while the removable cartridge is being replaced thus providing continuous operation.

Referring to claim 4. Sands discloses an automated freezer component (Figure 1) including a removal device (54; Figure 1) and an exit opening (76), and said removal device (90) removes said at least one item (52) from said automated freezer (Figure 1) through said exit opening (76) in response to said request (signal).

Referring to claim 5. Sands discloses an automated freezer component (Figure 1) wherein said platform (38b) raises after said at least one item (52) exits said automated freezer (Figure 1) through said exit opening (76).

Referring to claim 6. Sands discloses an automated freezer component (Figure 1) further including a sensor (42; Figure 1), and said removal device removes (90) said at least one item (52) from said automated freezer (Figure 1) through said exit opening (76) in response to said request (Signal) when said sensor detects (42) said at least one item (52).

Referring to claim 8. Sands discloses an automated freezer component (Figure 1) further including a controller (51) associated with the automated freezer (Figure 1) and a POS device (50), and wherein said request comprises a signal sent by said POS device (50).

Referring to claim 9. Sands discloses an automated freezer component (Figure 1) cartridge (22) has a substantially circular inner profile (see Figure 2 and 4).

Claims 7,18,19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sands in view of Boyer as applied to claim 4 above, and further in view of Kaufman (US 5,335,816).

Referring to claims 7,18,19,22. Sands in view of Boyer disclose all claimed limitations of claim 7 however Sands in view of Boyer do not disclose the removal device is pivotal.

Kaufman discloses a dispenser (Figure 5) wherein the removal device is pivotal (see pivot point between member 130 and 146; Figure 5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Sands in view of Boyer to include a removal device that is pivotal as taught by Kaufman because the lever configuration would provide a better mechanical advantage.

Claims 10-12 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sands in view of Boyer as applied to claim 1 above, and further in view of Covington (US 4,142,863).

Referring to claims 10-12,20. Sands in view of Boyer disclose all claimed limitations of claim 10 however Sands in view of Boyer do not disclose the cartridge comprising two half circular cutouts.

Covington discloses a dispenser cartridge (Figure 3) wherein the cartridge configuration is rectangular half cutouts (Figure 3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Sands in view of Boyer to include a cartridge comprising two half circular cutouts as taught by Covington because such a modification is well within the level of one of ordinary skill.

Claims 25-29 rejected under 35 U.S.C. 103(a) as being unpatentable over Sands in view of Boyer as applied to claim 1 above, and further in view of Tansley (US 2,315,827).

Sands in view of Boyer disclose all claimed limitations of claim 25 however Sands in view of Boyer do not disclose the retention mechanism is a plurality of arms moveable between a first position and a second position.

Tansley discloses a dispenser (Figure 1) wherein the retention mechanism comprises a plurality of arms (Figure 3) moveable between a first position and a second position.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Sands in view of Boyer to include retention mechanism comprises a plurality of arms as taught by Tansley because multiple arms would provide a better retaining of the articles.

#### ***Allowable Subject Matter***

The indicated allowability of claims 24-29 are withdrawn in view of the newly discovered reference(s) to Sands in view of Boyer, Kaufman, Covington and Tansley. Rejections based on the newly cited reference(s) follow.

***Response to Arguments***

Applicant's arguments with respect to claims 1,18 and 24 have been considered but are moot in view of the new ground(s) of rejection. See new rejections above.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAKESH KUMAR whose telephone number is (571) 272-8314. The examiner can normally be reached on M-F 8 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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